In The United States Patent And Trademark Office
United States Department Of Commerce

Certificate of Mailing I hereby certify that this document and the documents referred to in it as being attached or enclosed herewith are being deposited with the US Postal Service as First Class mail. postage prepaid, in an envelop Addressed to the Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 18, ~~2007~~ 2008

7-18-08

~~Applicant~~

Applicant: John Dash

Application No. : 10/616,165

Filing Date: 07/07/2003

For: Low Temperature Nuclear Fusion

Art Unit: 3663

Examiner: Richardo J. Palabrica
(aka Rick Palabrica)

Petition To Director
Under 37 CFR 1.181

Commissioner of Patents
P.O. Box 1450
Alexandria, VA. 22313-1450
Sir:

Norificant ion of Related Concurrently Filed Request

Concurrently a document is being filed with the PTO in connection with the above noted application captioned:

"Request for Reclusal By Examiner Palabrica,
His Supervisor And All Others In Group 3663 Or Elsewhere In The Patent Office
Who Have Been Contacted In Any Way Relative To The Subject Matter Of Or To Any

Aspects Of The Prosecution Of Above Captioned Application"

Whoever might normally act upon this Petition within the Office may be within the group requested to recluse themselves in this document. Under the circumstances it may be prudent to delay action on this Petition until the termination of proceedings relative to the reclusal request.

The Petition

The undersigned applicant hereby petitions to have the Office action mailed 06/18/2008 holding that the above captioned application was abandoned withdrawn and to hold that this application is pending and awaiting action by the Office.

No fee is submitted with this petition since . according to 37 CFR 1.181. in connection with this matter reference is also made to MPEP.03(a). It is also noted that this Petition is being prepared to be mailed to the Office as soon as it can be finished on a date as indicated in the preceding certificate of mailing. This date is less than a month prior to the 2 month period for response set for in 37 CFR 1.181(f).

The Concurrently Filed recluse of Office Officials.

It will be obvious for a mere glance of the file or files relative to the above noted application that the subject matter claimed in it has an extensive history. This history relates to the fundamental issue as to whether or not the Office has properly examined this application; It also relates to the question as to what extent the Office has been practicing "secret law" as indicated or suggested in 'SAWS" documents which have not been publicly released by the Office.

Fortunately this history is only indirectly significant as to the present petition in that it contributes to an obvious conclusion - that the Examiner handling this application has done what appears to have all that he could think of to delay a fair consideration of this application. It is believed that that this has been done with the approval of or at the instruction of his superiors in the Office.

Because of this the present petition is being filed concurrently with a document requesting recluse of the examiner and a number of others in the office

who may have been involved in the present application having received "special" treatment as it has been considered Many facts significant in connection with the consideration of this petition are set froth in connection with this other document. Since they may no be adequately covered in this petition the entire content of this other concurrently filed document is incorporated herein by reference.

Reservation Of Right To Supplement The Content Of This Petition

It is believed that a fair consideration of the present petition does not require a detailed analysis of the entire history of the subject matter of this application. It is also considered that a consideration of the entire history of the claimed subject matter would be beneficial and some what cumulative to consider at this time. at this time. In view of this this document is considerably shorter than it would need to be if it was necessary to review or discuss this history. In case it shall subsequently appear that a detailed review of this history is desirable the applicant wishes to reserve the right to supplement this petition if he considers that it is necessary to supplement it,

The Relevant Documents

A consideration of only three documents is considered absolutely necessary in connection with the formulation of a decision in connection with the current petition. These are:

(1) An Office Action mailed 10/13/2007 requiring an election of species;

(2) A document captioned b beginning ""Item 1. A petition ...". and concluding "....an Imperfect "limited" response to Office Communication Mailed Oct. 14, 2007" which was received by the Office on 11/5/07 (the received date is set forth in line 1, second page of following Office document};

(3) A document mailed 03/12/2008 in which this document (1) held that this document (1) was "improper" on the ground that "Action cannot be suspended in an application waiting reply by an applicant" and ignoring the fact that document (1) was captioned so as yo

include at the end of its title Response To Office Communication Mailed Oct. 14,2007" and specifically stated on page 5 that an election was made of the species of claim 13 and traversed.;

(4) a notice of abandonment mailed 06,18,2008 captioned indicating that the Applicant had not filed a "proper reply" to a Oct. 15, 2007 Office action and specifically that"{no reply has been received " to this Office action.

It is interesting to note that the notice of abandonment was "delayed" by the Office. The Applican't's response to the required election of species by the Office was received by the Office on 11/5/07. This was followed by a document mailed by the Office 4/12/2008 which did not mention anything relative to the abandonment of the application. Slightly more than three months later the Office sent out a notice of abandonment. Why this delay?

The applicant feels that he cannot comment further on this without facing the risk of again facing the issue of what can or cannot be stated in a response without the response being held to be in violation of the rule relative to "decorum and courtesy" It currently can be argued that any criticism of the Office which an examiner does not like violates this rule.

The Required Election

As filed this application pertained to acidic cold fusion in which a mixture of reactants is simultaneously subjected to an electric current so as to concurrently produce heat and a radioactive reaction product. This is a single step process. In document (1) the Examiner alleged that this case contained claims directed toward two "patentably distinctive species" including one in which only any electrolyte is heated and another in which the electrolyte is both heated and became radioactive.

In support of this erroneous holding the examiner has indicated that b because a single claim 13 does not mention the production of radioactivity that the Applicant claims two different species - one without the production of radioactivity and the other with. Since when is there any requirement that every detail and and aspect of a process be set forth in each and every claim to the process? The fact

that the single step process claimed does produce more than one "product" is not a requirement that every claim to that process specify each and everything that is produced by the process. Frequently a process results in products which are not even recognized. This does not detract from the utility of the process.

In view of the nature of the Applicant's process there is nothing to suggest that Applicant has disclosed or claimed species having mutually exclusive characteristics. There is nothing anywhere suggesting that the two items produced concurrently by Applicant's process are "obvious variants of one another" as stated by the Examiner. Since the heat and radioactivity are concurrently produced by Applicant, the allegation that they require separate searches is nonsense. The Examiner's statements relative to the election are such a mixture of confused words which seem to, bui really do noy relate to the application including claims as presented that the formulation of a more precise response than was presented without risking this application again being held to be abandoned because of the "decorum and courtesy" issue, not leading to a decision on the long pending request for such a decision

The Office Was Under An Implied Duty to Respond

It would be a waste time to go over each and every statement in the required election. To make matters worse the office has in effect set up an impossible situation., The Applicant is constrained against more precisely setting forth arguments concerning the requirement for an election of species because he has no guidelines clearly specifying what can and cannot be stated in responding to an office action in the absence of a clear response to the "Request for Reconsideration Of Decision By Donald T. Hajac. Director 3600 Mailed March 1. 2007."

How can this Applicant be expected to deal with a file history indicating that the Office has practiced "secret law" by refusing claims in this application by an approximately 50 page initial Office action which was written so as to suggest nothing akin to this secret law. The same question is applicable to the fact thatprobably only with a tremendous bank account could the applicant even hope to get significant facts as what al has "influenced" the treatment of this application

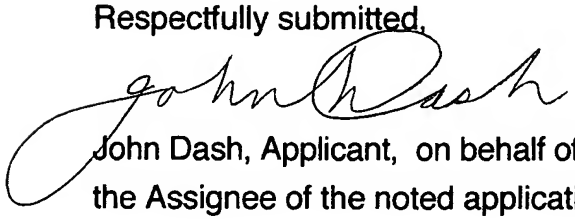
by the Office. The problem is complicated by a variety of other "interesting" facts which are concurrently unknown. The date situation relative to relative to thedelay in sending out a notice of abandonment is an example of this. Why did the Office delay by several months a claim that this application was abandoned ?

Conclusion

Isn't it time that the Office start cleaning up its reputation? It is considered obvious that the prosecution of this application has not been "normal" because of the claimed subject matter. Sooner or later the conduct of the Office with respect to this and presumably other applications is bound to become publicly known. Already the US patent system is under attack. Isn't it in the best interest of all involved to administer it as Congress intended ?

The only way of recreating the past reputation of the PTO is by realistically making sure that applications are fairly and accurately examined. Virtually everything which has occurred relative to this application seems to indicate that it has not been given a fair consideration, The record showsthat it has not received this treatment. Isn't it time for the Office to confess its improper conduct in an effort to provide a meaningful patent system by fairly examining applications, stopping the economic de facto rejection of unfavored applications and showing that fairly considering situations such the one relative to the delayed abandonment after in effect indicating that a response was accepted by no objecting to it/

Respectfully submitted,



July 18 ,2008

John Dash, Applicant, on behalf of himself and
the Assignee of the noted application,